



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

OCT 03 2018

CERTIFIED MAIL # 7015 0640 0001 1122 1878
RETURN RECEIPT REQUESTED

Ivan Sydney, Business Manager
First Mesa Consolidated Villages
P.O. Box 260
Polacca, AZ 86042

Re: Federal Administrative Order, EPA Docket No. PWS-AO-2018-6001
Polacca Public Water System
Public Water System Identification Number: 090400106

Dear Mr. Sydney:

The United States Environmental Protection Agency ("EPA"), Region 9, issues the enclosed Administrative Order ("Order") to First Mesa Consolidated Villages ("FMCV") for violations of the federal Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300f *et seq.*, at the Polacca public water system ("System"), which FMCV owns and/or operates on the Hopi Indian Reservation. Pursuant to this Order, EPA has determined that the System is out of compliance with the maximum contaminant level for arsenic at 40 C.F.R. § 141.62(b), the monitoring requirements for arsenic at 40 C.F.R. § 141.23, and the Tier 2 public notice requirements at 40 C.F.R. § 141.203. The Order requires, among other things, that FMCV submit within 15 days of the effective date of this Order a letter describing its intention to comply with this Order, meet the arsenic MCL by December 31, 2023 and submit a compliance plan within 90 days of the effective date of the Order that specifies how FMCV will bring the System back into compliance with the SDWA, including identifying enforceable milestones.

This Order is a formal legal document. Violation of any term of this Order may subject FMCV to (i) a civil judicial penalty of up to \$54,789 per day per violation for each day in which a violation occurs as assessed by the United States District Court, under sections 1414(b) and 1414(g)(3) of the SDWA, 42 U.S.C. §§ 300g-3(b) and (g)(3); (ii) an administrative penalty of up to \$38,175 after notice and opportunity for hearing, under section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(C), and/or (iii) the filing of a judicial action seeking compliance with the terms of this Order, under section 1414(b) of the SDWA, 42 U.S.C. §§ 300g-3(b).

An EPA Information Sheet describing the information resources available to small businesses is also enclosed.

Sheet cc: Timothy Nuvaangyaqma, Chairman, Hopi Tribe
 Amanda Sampson, Attorney, First Mesa Consolidated Villages

Enclosures:

Order

Small Business Regulatory Enforcement Fairness Act SBREFA Information

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We urge your prompt attention to this matter. If you have questions regarding this Administrative Order, please contact Hillary Hecht in our SDWA/FIFRA Enforcement Office, at 415-947-4266. Legal questions should be directed to Janet Magnuson in the EPA Region 9 Office of Regional Counsel, at 415-972 3887.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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75 Hawthorne Street
San Francisco, CA 94105-3901

IN THE MATTER OF:)	Docket No. PWS-AO-2018-6001
)	
First Mesa Consolidated Villages)	
)	
Respondent)	
)	
PWS ID. No. 090400106)	ADMINISTRATIVE ORDER
)	
Proceedings pursuant to section 1414(g) of the federal)	
Safe Drinking Water Act, 42 U.S.C. § 300(g)-3(g).)	
)	
)	
)	

I. AUTHORITY

1. The United States Environmental Protection Agency ("EPA"), issues this administrative order for compliance ("Order") under the authority vested in the EPA Administrator by section 1414(g) of the federal Safe Drinking Water Act ("Act"), 42 U.S.C. 300g-3(g) for the purpose of bringing the Polacca public water system, PWS ID 090400106 ("System"), located in Navajo County, Arizona, into compliance with the requirements of the federal Safe Drinking Water Act ("SDWA"), 42 U.S.C. 300f *et seq.*, and its National Primary Drinking Water Regulations ("NPDWRs") at 40 C.F.R. Part 141. The authority to take this action has been duly redelegated to the undersigned Manager in EPA Region 9's Enforcement Division.

II. JURISDICTION

2. EPA has primary enforcement responsibility for the Act's public water system supervision program during any period when a Tribal government does not have primary

enforcement responsibility pursuant to section 1413 of the Act, 42 U.S.C. § 300g-2. See 40 C.F.R. § 141.2.

3. The Hopi Tribe does not have primary enforcement responsibility under the Act to administer the public water supply supervision program on the Hopi Reservation. Thus, EPA has primary enforcement responsibility for the Act's public water system supervision program on the Hopi Reservation.

IV. DEFINITIONS

4. "Order" shall mean this document, all attachments hereto, all subsequent modifications, and all submissions required by this Order and approved by EPA.

5. "Day" shall mean a calendar day unless otherwise specified. In computing a prescribed period of time, the day of the event shall not be included.

6. "Maximum Contaminant Level" ("MCL") shall mean the maximum permissible level of a contaminant in water which is delivered to any user of a public water system, as further defined at 40 C.F.R. § 141.2.

V. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

EPA makes the following findings of fact and conclusions of law:

7. Respondent First Mesa Consolidated Villages ("FMCV") ("Respondent") is a self-governing village that is located within the Hopi Reservation, and is an "association," and thus a "person" within the meaning of section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 142.2.

8. Respondent owns and/or operates the System and thus meet the definition of a "supplier of water" provided in section 1401(5) of the SDWA, 42 U.S.C. § 300f(5) and 40 C.F.R. § 141.2.

9. Suppliers of water must comply with the requirements of Part B of the SDWA, 42 U.S.C. § 300g *et seq.*, and its NPDWRs.

10. The System serves approximately 2,600 persons and has 517 service connections.

11. The System has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents and therefore meets the definition of a “public water system” in section 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and the definition of a “community water system” (“CWS”) in section 1401(15) of the SDWA, 42 U.S.C. § 300f(15), and 40 C.F.R. § 141.2.

12. The System meets the definition of a “small water system” provided in 40 C.F.R. § 141.2, which specifies that a small water system is a water system that serves 3,300 persons or fewer.

13. The System’s source of drinking water is groundwater from two wells, West Well EP001 and East Well EP002.

14. EPA issued a “finding of violation” detailing violations at the System on February 16, 2017.

15. The Hopi Tribe and Respondent have taken steps toward development of the Hopi Arsenic Mitigation Project (“HAMP”). The HAMP is a new regional water system that is expected to be able to deliver SDWA-compliant water to Respondent via a new waterline.

VIOLATIONS OF THE ARSENIC MCL REQUIREMENTS

16. The MCL for arsenic is 0.010 mg/L, or 10 parts per billion (“ppb”). 40 C.F.R. § 141.62(b).

17. PWSs that exceed the arsenic MCL are required to monitor quarterly beginning in the next quarter after the violation occurred. 40 C.F.R. § 141.23(c)(7).

18. Pursuant to 40 C.F.R. § 141.23(i)(1), compliance with the MCL at a public water system conducting arsenic monitoring at a frequency greater than annually is determined by the running annual average (“RAA”). If the average at any sampling point is greater than the MCL, then the system is out of compliance. If any sample would cause the annual average to be exceeded, then the system is out of compliance immediately. If a PWS fails to collect the required number of samples, compliance will be based on the average of the total number of samples actually collected for the year.

19. Groundwater systems are to take a minimum of one (1) sample at every sampling point. 40 C.F.R. § 141.23(a)(1).

Arsenic MCL

20. Since at least the first quarter of 2013, the System has been in continuous violation of the arsenic MCL of 0.010 mg/l based on the RAA of available analytical results of arsenic sampling. The System’s violation of the arsenic MCL has continued into at least the second quarter of 2018. For the latest compliance period beginning July 2017 through June 2018, EPA calculated an arsenic RAA of 0.0155 mg/L at West Well EP001 and 0.0228 mg/L at East Well EP002.

Arsenic Monitoring Requirements

21. Pursuant to 40 C.F.R. § 141.23(c)(7), systems which exceed the arsenic MCL must increase monitoring frequency from annually to quarterly.

22. Due to its exceedances of the arsenic MCL, since at least the first quarter of 2013, the System was required to monitor quarterly for arsenic.

23. The System failed to monitor and/or report for arsenic during the second and fourth quarters of 2013; the first, second, third and fourth quarters of 2014; and the first, second and fourth quarters of 2015 and the first and third quarters of 2016.

VIOLATIONS OF THE PUBLIC NOTICE REQUIREMENTS

24. 40 C.F.R. Part 141, Subpart Q, requires public water systems to provide public notice of any failure to comply with any NPDWR and other situations listed in 40 C.F.R. § 141.201.

Tier 2 Notice

25. Pursuant to 40 C.F.R. § 141.203, Tier 2 public notice is required for MCL violations. Tier 2 public notice must be provided no later than thirty (30) days after the system learns of the violation and must be repeated every three months for as long as the violation persists.

26. As discussed in Paragraph 20, the System has been in continuous violation of the arsenic MCL since at least 2013 and is therefore required to provide Tier 2 public notice every three months for as long as these violations persist.

27. The System has failed to provide Tier 2 public notice for arsenic MCL exceedances for the second and third quarters of 2013; the second, third and fourth quarters of 2014; the first, second and third quarters of 2015 in violation of the requirements set forth in Table 1 of 40 C.F.R. § 141.203.

VI. ORDER

Based on the foregoing findings and pursuant to its authority under section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), EPA hereby ORDERS:

28. **Letter of Intent:** Within 15 days of the effective date of this Order, Respondent shall provide EPA with a letter describing its intention to comply with this Order.

29. **Compliance Plan:** Within 90 days of the effective date of this Order, Respondent shall provide EPA with a compliance plan and schedule for the System to come into compliance with the arsenic MCL (“Compliance Plan”). The Compliance Plan shall include proposed system modifications and a schedule for completion of the project and compliance with the arsenic MCL. The proposed schedule shall include specific milestone dates and a final compliance date consistent with the one set forth in this Order. If EPA determines that the Compliance Plan is not consistent with achieving compliance by the deadline set forth in this Order, EPA may disapprove the Compliance Plan in whole or part, and require revisions to the Plan. Respondent shall address all deficiencies identified by EPA, and resubmit the Compliance Plan for EPA’s approval within 15 days of receipt of EPA’s disapproval.

30. The Compliance Plan and schedule required by Paragraph 29, above, will be incorporated into this Order as enforceable requirements upon written approval by EPA.

31. **Compliance with Arsenic MCL:** Respondent shall demonstrate compliance with the arsenic MCL no later than **December 31, 2023**. Respondent must notify EPA in writing of the date they initially meet the arsenic MCL within 10 days of receiving the analytical results of sampling from the laboratory that show compliance with the arsenic MCL. This notification must include the laboratory’s analytical results. Following Respondent’s initial attainment of the arsenic MCL, Respondent must maintain continuous compliance with the arsenic MCL for all water the System serves to their customers for human consumption.

32. **Quarterly Monitoring:** Respondent must sample for arsenic on a quarterly basis until directed otherwise by EPA in writing. Respondent must comply with additional and more

frequent sampling and analysis requirements if EPA determines in writing that these additional requirements are necessary for determining compliance with the arsenic MCL, or are otherwise necessary and appropriate to assist with achieving or overseeing compliance with the arsenic MCL and this Order.

33. **Progress Reports:** After receiving EPA's approval of the Compliance Plan and schedule required by Paragraph 29, above, Respondent shall provide EPA with semi-annual reports on the progress made toward bringing the System into compliance with the arsenic MCL. Respondent must submit written reports to EPA that describe Respondent's progress during the previous six months. The six-month periods will be January to June and July to December of each year. Each report is due by the 10th day of the month following the relevant six-month period (*i.e.*, July 10th of each year and January 10th of each year).

34. **Reporting:** Respondent must comply upon the Order's effective date and at all times thereafter with the reporting requirements set forth at 40 C.F.R. § 141.31(a) and (b).

35. **Compliance with Public Notification Requirements:** No later than ninety (90) days from this Order's effective date or within ten (10) days of receiving its most recent quarterly arsenic monitoring results, whichever is sooner, Respondent shall provide a Tier 2 public notice of its failure to meet the arsenic MCL. Respondent must comply with the public notice requirements applicable to "community water systems," including provisions of notice by mail or other direct delivery to each customer receiving the bill and to other service connections to which water is delivered by the System. EPA guidance is available at:

<https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockkey=P1006ROA.txt>.

36. All submittals to EPA made pursuant to this Order must be accompanied by the following certification signed by Respondent's representatives:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in such a manner to ensure that qualified personnel gathered and evaluated the information submitted. I certify that the information is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

37. Respondent must submit all information required under this Order to:

Hillary Hecht
SDWA/FIFRA Enforcement Section
U.S. Environmental Protection Agency
75 Hawthorne Street (ENF-3-3)
San Francisco, CA 94105
Phone: (415) 947-4266
E-mail: hecht.hillary@epa.gov

and to the EPA Drinking Water Program through the Data Manager at DataManager@epa.gov.

VII. GENERAL PROVISIONS

38. Violations of any term of this Order may subject Respondent to (i) a civil judicial penalty of up to \$54,789 per day per violation for each day in which a violation occurs as assessed by the United States District Court, under sections 1414(b) and 1414(g)(3) of the SDWA, 42 U.S.C. §§ 300g-3(b) and (g)(3); (ii) an administrative penalty of up to \$38,175 after notice and opportunity for hearing, under section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(C), and/or (iii) the filing of a judicial action seeking compliance with the terms of this Order, under section 1414(b) of the SDWA, 42 U.S.C. §§ 300g-3(b).

39. Respondent may seek federal judicial review of this Order pursuant to section 1448(a) of the Act, 42 U.S.C. § 300j-7(a).

40. The provisions of this Order shall be severable. If any provision of this Order is found to be unenforceable, the remaining provisions shall remain in full force and effect.

41. This Order will not prohibit, prevent, or otherwise preclude EPA from taking any action(s) it deems appropriate to enforce the SDWA in any manner and will not prohibit,

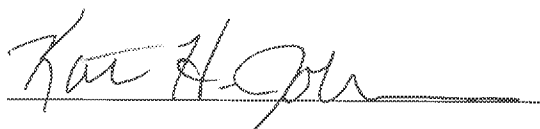
prevent, or otherwise preclude EPA from enforcing or using this Order in subsequent administrative proceedings. Nothing in this Order constitutes a waiver, suspension, or modification of the requirements of the SDWA, or the rules and regulations promulgated thereunder, which remain in full force and effect. Issuance of this Order is not an election by EPA to forgo any civil or administrative action otherwise authorized under the law.

42. After Respondent completes all activities required by this Order, including demonstrating compliance with the arsenic MCL based on four consecutive quarters of sampling, and have achieved and maintained compliance with the requirements of this Order and the SDWA, Respondent may request in writing that EPA terminate this Order. EPA may also terminate the Order without such a request from Respondent. Any termination of this Order will only become effective upon written notice by EPA of the termination.

VIII. EFFECTIVE DATE

43. This Order shall become effective five (5) business days after signature by EPA and will remain in effect until Respondent demonstrates compliance with the terms and conditions of this Order and EPA terminates the Order.

Dated this 2nd day of October, 2018

A handwritten signature in black ink, appearing to read "Kathleen H. Johnson", is written over a horizontal line.

Kathleen H. Johnson, Director

Enforcement Division

U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

Office of Small and Disadvantaged Business Utilization (OSDBU)

www.epa.gov/aboutepa/about-office-small-and-disadvantaged-business-utilization-osdbu

EPA's OSDBU advocates and advances business, regulatory, and environmental compliance concerns of small and socio-economically disadvantaged businesses.

EPA's Asbestos Small Business Ombudsman (ASBO)

www.epa.gov/resources-small-businesses/asbestos-small-business-ombudsman or 1-800-368-5888

The EPA ASBO serves as a conduit for small businesses to access EPA and facilitates communications between the small business community and the Agency.

Small Business Environmental Assistance Program

<https://nationalsbeap.org>

This program provides a "one-stop shop" for small businesses and assistance providers seeking information on a wide range of environmental topics and state-specific environmental compliance assistance resources.

EPA's Compliance Assistance Homepage

www.epa.gov/compliance

This page is a gateway to industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

Compliance Assistance Centers

www.complianceassistance.net

EPA sponsored Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

Agriculture

www.epa.gov/agriculture

Automotive Recycling

www.ecarcenter.org

Automotive Service and Repair

www.ccar-greenlink.org or 1-888-GRN-LINK

Chemical Manufacturing

www.chemalliance.org

Construction

www.cicacenter.org

Education

www.campuserc.org

Food Processing

www.fpeac.org

Healthcare

www.hercenter.org

Local Government

www.lgean.org

Surface Finishing

<http://www.sterc.org>

Paints and Coatings

www.paintcenter.org

Printing

www.pneac.org

Ports

www.portcompliance.org

Transportation

www.tercenter.org

U.S. Border Compliance and Import/Export Issues

www.bordercenter.org

EPA Hotlines and Clearinghouses

www.epa.gov/home/epa-hotlines

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Examples include:

Clean Air Technology Center (CATC) Info-line

www.epa.gov/catc or 1-919-541-0800

Superfund, TRI, EPCRA, RMP, and Oil Information Center

1-800-424-9346

EPA Imported Vehicles and Engines Public Helpline

www.epa.gov/otaq/imports or 1-734-214-4100

National Pesticide Information Center

www.npic.orst.edu or 1-800-858-7378

National Response Center Hotline to report oil and hazardous substance spills - <http://nrc.uscg.mil> or 1-800-424-8802

Pollution Prevention Information Clearinghouse (PPIC) -

www.epa.gov/p2/pollution-prevention-resources/ppic or 1-202-566-0799

Safe Drinking Water Hotline -

www.epa.gov/ground-water-and-drinking-water/safe-drinking-water-hotline or 1-800-426-4791

Toxic Substances Control Act (TSCA) Hotline

tsc-hotline@epa.gov or 1-202-554-1404

Small Entity Compliance Guides

<https://www.epa.gov/reg-flex/small-entity-compliance-guides>

Regional Small Business Liaisons

EPA publishes a Small Entity Compliance Guide (SECG) for every rule for which the Agency has prepared a final regulatory flexibility analysis, in accordance with Section 604 of the Regulatory Flexibility Act (RFA).
<https://www.epa.gov/reg-flex/small-entity-compliance-guides>

EPA's Small Business Compliance Policy

The Portal helps users locate tribal-related information within EPA and other federal agencies.
EPA Compliance Incentives
 EPA provides incentives for environmental compliance by participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

EPA's Tribal Portal

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits.
<https://nationaltribeap.org/states-list>

State Small Business Environmental Assistance Programs (SBEAPs)

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.
www.epa.gov/tribal-portal

State Resource Locators

The U.S. Environmental Protection Agency (EPA) Regional Small Business Liaison (RSBL) is the primary regional contact and often the expert on small business assistance, advocacy, and outreach. The RSBL is the regional voice for the EPA Asbestos and Small Business Ombudsman (ASBO).

EPA's Audit Policy

www.epa.gov/enforcement/small-businesses-and-enforcement

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.

If you receive compliance assistance or submit a comment to the SBRFEFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBRFEFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

Your Duty to Comply

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBRFEFA.

The Small Business Regulatory Enforcement Fairness Act (SBRFEFA) established a SBRFEFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBRFEFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Commenting on Federal Enforcement Actions and Compliance Activities